IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C.R.No.3300 of 2005
Date of Decision : September 08, 2006.

Sham Lal and another ..... Petitioners

Vs.

Patiala Improvement Trust & others ..... Respondents

Coram : Hon'ble Mr.Justice P.S.Patwalia

* * *

Present : Mr.Sandeep Chopra, Advocate
for the petitioners.

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P.S.Patwalia, J. (Oral) :

The present civil revision is directed against order dated 22.12.2004 passed by the Civil Judge (Senior Division), Patiala vide which objections filed by the Judgment Debtor, Improvement Trust, Patiala were allowed.

The only argument raised by the learned counsel for the petitioner is that in fact possession of the land measuring 43 bighas 9 biswas was taken from them by the Improvement Trust. However compensation for only 18 bighas and 12 biswas has been awarded to them.

A reading of the order of learned Civil Judge would show that this was the main issue in controversy between the parties. After receiving

objections issues were framed and parties were allowed to lead evidence.

After detailed evidence was led it transpired that the land owners had been litigating in respect of this land. The decree holders had challenged the notification under Section 42 of the Punjab Town Improvement Act in this Court as well as in the Hon'ble Supreme Court and in those proceedings their dispossession had been stayed. During that period the decree holders sold certain plots out of their land to different persons. It was as a result of this fact that the Land Acquisition Collector had taken possession of only 18 bighas and 12 biswas of their land. The claims of the persons to whom the land had been sold by the decree holders had been adjusted separately by the Improvement Trust. In fact it was also found that the decree holders had filed writ petition in this court claiming enhanced compensation only in respect of 18 bighas 10 biswas of land. It was further found that they could not produce any documents on the record to establish that possession of the remaining land was taken by the Land Acquisition Collector. It was on this basis that the learned Judge came to the conclusion that they were entitled to compensation only for 18 bighas and 12 biswas. The relevant observations of the Executing Court are as hereunder :-

> *"I find no merit in the argument, advanced by the learned counsel for the objector, JDW1 Balbir Singh, Draftsman has reiterated on oath that out of 43 bighas 9 biswas of land, of decree holders, acquired vide award dated 28.7.1978, the possession was taken over, by Land Acquisition Collector of 18 bighas 12 biswas of land on*

14.8.1978. He has proved copy of warrant of possession Ex.D2, on which he has identified the signatures of Shri K.C.Maini, Land Acquisition Collector. No suggestion has been given to him, that possession of entire land of decree holder acquired, vide award dated 28.7.1978 has been taken over. The purpose of cross-examination is to put the case of the opponent, so that he may admit or deny the same. Since statement of the witness has gone unrebutted and uncontroverted, therefore, inference is that decree holders admit the sait fact, to be correct. In view of his statement, onus shifted on the decree holder, to prove the extent of possession of their land, acquired by the objector, but they have not led any documentary evidence to prove that fact for the reasons best known to them. He has conceded that vide warrant of possession Ex.D2, Improvement Trust, has taken over possession of 50 bighas 1 biswas of land. This admission made by the witness, of the objector is of no consequence, because it is own case of the decree holders that their 43 bighas 9 biswas of land, has been acquired by the objector trust and as per documents placed on record, the objector has acquired 180 acres of land of various land

owners. Sh. Pawan Kumar, Field Kanugo, was examined as court witness on 23.1.2001. This official witness has stated that mutation of 19 bighas 3 biswas of land of decree holder has been sanctioned in favour of Improvement Trust, Patiala, as per entries made in jamabandi for the year 1996-97 and they are still shown to be owners of 24 bighas and 3 biswas of land. He has also deposed that Sham Lal, decree holder has sold 7 bighas 5 biswas of his share in the land acquired by Improvement Trust, Patiala, but Nirmala Devi has not sold any share. He has also deposed that the land, which has been sold by Sham Lal has not been acquired by Improvement Trust. In order to clear the factual position, Sh.Pritpal Singh, Field Kanugo was also summoned as court witness. In his statement, recorded on 20.11.2004, he has deposed that as per the entries made in jamabandi for the year 1976-77, Sham Lal and Nirmala Devi were owners of 48 bighas of agricultural land, out of which Improvement Trust has taken over possession of 17 bighas 13 biswas of land as mentioned in Rapat Roznamcha no.791 dated 14.8.1978. Pritpal Singh, Field Kanugo, has further deposed that decree holder has sold 3 bighas of land, which is

not included in the land, possession of which has been secured by the Improvement Trust. In view of the abovesaid evidence, adduced on record, the court has to accept the version of objector that out of 43 bighas 9 biswas of land of the decree holders, possession of only 18 bighas 12 biswas of land has been taken over by the objector. As evident from Annexure III, forming part of CWP No.7645 of 1998 titled as Nirmala Devi versus The Improvement Trust, Patiala, decree holder Nirmala Devi, has sought payment of only 18 bighas 10 biswas of their land. The decree holders have not produced on record any documentary evidence that in the writ petition filed by them for enhancement of amount of compensation against the order passed by Land Acquisition Tribunal, they have claimed compensation of possession of their entire land, by the Improvement Trust, although DHW1 Nirmala Devi has conceded, that the writ petition for enhancement of the compensation filed by the decree holders is pending in the Hon'ble High Court."

I find no error in the view taken by the learned Civil Judge. After assessing detailed evidence on the record a firm finding of fact has been recorded that possession of 18 bighas and 12 biswas was taken and

compensation for that land has already been paid to the petitioners.

No other point was argued.

I therefore find no merit in this civil revision and the same is accordingly dismissed in limine.

September 08, 2006 (P.S.Patwalia)
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